

APPEAL NO. 022923
FILED JANUARY 2, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 22, 2002. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that she did not have disability because she did not sustain a compensable injury; that the claimed injury did not arise out of an act of a third party intended to injure the claimant because of personal reasons; and that the respondent (carrier) is not relieved of liability under Section 409.002 because the claimant had good cause for not giving notice of her alleged injury within the 30-day period following the date of injury. In her appeal, the claimant argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance. The carrier did not appeal the hearing officer's determinations concerning the personal animosity defense or the timely notice defense.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury. The question of whether the claimant sustained a compensable injury was a question of fact for the hearing officer to resolve. The hearing officer could have found injury based on the claimant's testimony alone. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). However, he was not bound to accept the claimant's testimony. It only created an issue of fact for the hearing officer to resolve. From the hearing officer's discussion it is apparent that although he believed that the incident at work took place, he was not persuaded that the incident caused damage or harm to the physical structure of the claimant's body. And, as such, the claimant did not sustain her burden of proving that she sustained an injury within the meaning of that term for purposes of the 1989 Act. The hearing officer is the sole judge of the weight, credibility, relevance, and materiality of the evidence before her. Section 410.165(a). He was acting within his province as the fact finder in finding that the claimant did not sustain a compensable injury, damage or harm to the physical structure of the body, in the altercation with Ms. S. Our review of the record does not reveal that the hearing officer's injury determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the hearing officer's determination that she did not have disability. Disability means the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Section

401.011(16). Thus, the existence of a compensable injury is a prerequisite to a finding of disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231-4813.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Edward Vilano
Appeals Judge